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RECENT CASES

CARRIERS—FREIGHT SHIPMENT—NOTICE TO CONSIGNEE.—SEABOARD AIR LINE RY. CO. v. DIXON, 79 S. E. (GA.), 1118.—*Held*, that where shipments of lumber in car load lots were consigned to a person at a named city, and were transported to their destination over the railroad on which they were shipped, and the consignee was given notice and afforded due opportunity to receive and unload the lumber, the liability of the railroad company as a common carrier ceased.

The cases are hopelessly in conflict as to the precise moment when the liability of a railroad company as a common carrier ends, and the liability of a warehouseman begins. Three different rules are recognized in the decisions, known as the Massachusetts, New Hampshire, and New York rules. The Massachusetts rule holds that the liability of the company terminates when the transit is ended, and the goods deposited safely on the platform or in the warehouse of the road. *Norway Plains Co. v. B. & M. R. R. Co.*, 1 Gray (Mass.), 263. This rule has been followed in other jurisdictions. *R. R. Co. v. Pound*, 111 Ga., 6; *Schumacher v. R. R. Co.*, 207 Ill., 199; *R. R. Co. v. Reyman*, 73 N. E., 587; *Mohr v. R. R. Co.*, 40 Ia., 579; *Herf & Frerichs Chem. Co. v. R. R. Co.*, 100 Mo. App., 164; *Chalk v. R. R. Co.*, 85 N. C., 423; *Steamship Co. v. Smart*, 107 Pa. 492; *Spears v. R. R. Co.*, 11 S. C., 158. The so-called New Hampshire rule holds that placing the goods in the warehouse alone, does not discharge the company from liability as a common carrier, until the consignee has had a reasonable time after their arrival to inspect and take them away, in the ordinary course of business. *Moses v. B. & M. R. R. Co.*, 32 N. H., 523. This conclusion also has been followed by many courts. *Tallahassee Falls Mfg. Co. v. R. R. Co.*, 128 Ala., 167; *R. R. Co. v. Nevill*, 60 Ark., 375; *R. R. Co. v. Newlarger & Bro.*, 67 Kans., 846; *Wald v. R. R. Co.*, 92 Ky., 645; *Maignan v. The Railroad*, 24 La. Ann., 33; *Winslow v. The Railroad*, 42 Vt., 700; *Berry v. R. R. Co.*, 44 W. Va., 538; *Backus v. R. R. Co.*, 922 Wis., 393. Under the New York rule the law is stated to be that the liability of the company as a common carrier continues until the consignee has been notified of the arrival of the goods and has had a reasonable time in the ordinary course of business, within which to remove them. *Fenner v. Buffalo & St. L. R. R. Co.*, 44 N. Y., 505. This rule has received judicial sanction in other jurisdictions. *Walters v. R. R. Co.*, 139 Mich., 303; *Pinney v. R. R. Co.*, 19 Minn., 257; *R. R. Co. v. Fuqua & Horton*, 84 Miss., 490; *R. R. Co. v. Hatch*, 52 Ohio St., 408. Statutes have been passed in some states adopting this rule. See *Collins v. R. R. Co.*, 104 Ala., 390; *Cavallaro v. R. R. Co.*, 110 Cal., 348; *R. R. Co. v. Naive*, 112 Tenn., 239; *R. R. Co. v. Haynes*, 72 Tex., 175. This is also the rule in England and Canada. *Mitchell v. R. R. Co.*, L. R. 10 Q. B., 256; *Richardson v. C. P. R. R. Co.*, 19 Ont. Rep., 369. The great weight of authority, both in this country and in England, sustains the New York rule. It would seem to be the better of the three, in that, even when the goods have been safely deposited in a warehouse, they are still in the custody, and under the control, of the carrier, with the same oppor-

tunities to embezzle them, as when in transit. The same reasons, therefore, upon which are based the severe accountability of the carrier for the safety of the goods while they are strictly in transit, would seem to require that the company should be the custodian of the goods as carrier, until they had either tendered them to the consignee, or had, after notifying him of their arrival, given him a reasonable time within which to take them away. The principal case is in accord with this conclusion.

CARRIERS—TRANSPORTATION OF BAGGAGE—RELATION OF CARRIER AND PASSENGER.—ALABAMA GREAT SO. RY. *v.* KNOX, 63 SO. REP., 538.—Where a passenger purchases a ticket from one point to another over a carrier's line and checks his baggage thereon, it is not necessary, in order to create the relation of carrier and passenger with reference to the baggage, so as to render the carrier liable as such for the loss thereof, that the passenger should accompany the baggage either on the same train, or at all.

A traveller is not entitled to have his personal baggage carried in consideration of fare paid by him, unless it is on same train which carries him, is the general rule. Angell, *Carriers*, Sections 107, 110; *II Redf. Railroads* (4th edition), 39; Thompson, *Carriers*, 521, Section 8. In *Hutchinson on Carriers*, Vol. 3, page 1516, the rule is stated: "If that which would have been baggage had it been accompanied by the owner should be accepted when owner does not become a passenger, the carrier would not be responsible for it as baggage." The rule is so laid down in most of the cases. *Glazo v. N. Y. Central*, 36 Barb., 557; *Wilson v. Grand Trunk*, 56 Me., 60; *Bomar v. Maxwell*, 28 Tenn., 621; *Merrill v. Grinnell*, 30 N. Y., 594; *Tewes v. Steamship Co.*, 85 N. Y. S., 60; *Collins v. Railroad*, 10 Cushing, 506. In *Marshall v. Pontiac Railroad*, 126 Mich., 45, it was held that the company became a mere gratuitous bailee of baggage when the owner did not accompany it. In *Beer v. Railroad*, 67 Conn., 417, in an opinion written by Baldwin, J., it was held the company was not even responsible as gratuitous bailee, when, through a mutual mistake, the baggage was checked without the owner's having bought, or intending to buy a ticket. In *Elvira Harbeck*, 2 Blatchf., 366, however, it was held the company was a bailee for hire, and must exercise due care. In *Shaw v. Northern Pacific*, 40 Minn., 110, the company was held liable as a common carrier for baggage shipped on a later train than the owner took. However, this was for the company's convenience. In *McKibben et als. v. Wisconsin Central Railroad*, 100 Minn., 270, the general rule is criticized but the decision is on another point. The only case in harmony with *Alabama Great So. Ry. v. Knox*, is *Larned v. Central R. R. of N. J.*, 79 Atl., 289 (1911), in which there is a *per curiam* decision without discussion. In view of modern conditions, it would seem that this is better than the rigid, technical rule established when it was necessary, for the carrier's protection, that the traveller be on the train that carried his baggage, and in most cases it would appear that the carrier is estopped by his conduct from claiming the strict application of the rule. Unquestionably the overwhelming weight of authority is against the principal case, but there have been few adjudications of the point in recent years and the